

F.O.I. 101



Presented by:
Amy J. LiVolsi, Esq.
Assistant Corporation Counsel
City of Stamford

What is FOI?



The Freedom of Information Act

- Governor Ella Grasso
- Open Government
- Sunshine Laws
- The public is entitled to access to Government meetings and records
- Codified in the Connecticut General Statutes

Our Process



- Holder of the records is the proper person to receive and respond to the request.
- Advise me if you receive a request.
 - We are keeping statistics.
 - I will provide as much or as little assistance as is appropriate.
- I am your resource; call me with questions anytime.

FOI 101 – Road Map



- Meetings Provisions
- Records Provisions
- The FOI Commission and their Process

Public Meetings



The meetings of all public agencies
shall be open to the public
except for Executive Sessions
as defined in CGS §1-200(6).

CGS §1-225(a)

Public Meetings



The FOI Act recognizes 3 types of meetings:

1. Regular.
2. Special.
3. Emergency.

CGS §1-225(b) and (c)

Public Meetings



Regular: File annual notice by 1/31.

Special: Upon at least 24 hours notice.

Emergency: Must be a true emergency;
Failure to plan is not an emergency.

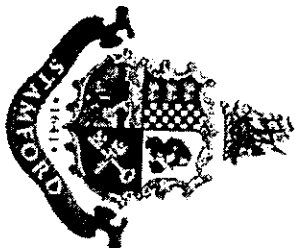
* Available with Sec'y Of State (state) or Town Clerk and in place of business. Also, must be posted on agency website.

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	Regular	Special	Emergency
File yearly schedule with Sec'y Of State (state) or Town Clerk (municipal) by Jan. 31.*	File yearly schedule with Sec'y Of State (state) or Town Clerk (municipal) by Jan. 31.*	At least 24 hrs. before meeting, file at Sec'y Of State (state) or Town Clerk (municipal).*	None required if emergency is justified.
Agenda available at least 24hrs. before meeting.**	Agenda available at least 24hrs. before meeting.**	At least 24 hrs. before meeting. Time, place and business must be included in notice.*	None required if emergency is justified.
Agenda items may be added by 2/3 vote of those members present and voting.	Agenda items may be added by 2/3 vote of those members present and voting.	Not permitted	Only emergency matters may be considered.
Within 48 hrs. after meeting (if minutes not available within 48 hours).	Within 48 hrs. after meeting (if minutes not available within 48 hours).	Within 48 hrs. after meeting (if minutes not available within 48 hours).	Within 48 hrs. after meeting (if minutes not available within 48 hours).
Within 7 calendar days after meeting.***	Within 7 calendar days after meeting.***	Within 7 business days after meeting.***	Within 72 hrs. after meeting. Must state reason for emergency.***



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Public Meetings



Agenda Sufficiency

- Agendas must apprise the public of matters to be addressed at the meeting so the public may properly prepare and be present to express their view.
- "Personnel" or "Legal" are insufficient.

Public Meetings: What is a Meeting?



Definition:

1. Any hearing of a public agency, OR
2. Other proceeding of a public agency, OR
3. Any convening or assembly of a quorum of a multimember public agency, OR
4. Any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment,
5. To discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

Public Meetings



What is NOT considered a meeting?

1. Personnel search committee for executive level employment.
2. Chance or social gatherings (no discussion of business).
3. Collective bargaining strategy or negotiations.
4. Caucus of members of a single political party.
5. Communication limited to notice of meetings or agendas.
6. Administrative or staff meetings of a single member public agency.

Public Meetings



- Be careful not to meet by e-mail or by phone!
- Location must be accessible to members of the public.

Public Meetings



- The FOIA does not require that the public be allowed to speak at the meetings.
- No member of the public shall be barred from a meeting or failing to provide their name or other information.

Public Meetings



Executive Sessions

Public Meetings: Executive Session – Procedure



- Need 2/3 vote of members present and voting to enter into ES.
- Must state the reason for entering into ES on the record.
- The reason must be one of the permitted purposes.
- NO VOTES in ES.

Executive Session: Permitted Purposes



1. Discussion of appointment, employment, performance, evaluations, health & dismissal of an employee (the employee must be notified and can require a public meeting);
2. Strategy & negotiations with respect to pending claims and litigation of which the Agency or Member is a part;
3. Matters concerning security strategy, deployment of security personnel, or devices affecting public security;
4. Selection of a site, or the lease, sale or purchase of real estate (if openness would adversely impact the price, lease, sale, purchase or construction); and
5. Discussions that would disclose records that are otherwise exempt from disclosure under CGS §1-210.

CGS §1-200(6)

Executive Session Permitted Purposes



Pending claims and litigation:

1. Written notice demanding legal relief or asserting a legal right with an intent to bring an action if relief or right is denied; or
2. Service of a complaint returnable to court; or
3. Agency's consideration of action to enforce or implement legal relief or a legal right.

Executive Session: Attendance



- Only Agency members may attend.
- Agency may invite persons to testify or give opinion. Their attendance is limited to time it takes to provide their testimony or opinion.
- Minutes must reflect who attended the executive session (except job applicants appearing for an interview).



Public Records

What is a "Public Record"?



- Any recorded data or information relating to the conduct of the public's business,
- Prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy,
- In any format (handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method).

GCS §1-200(5)

Access to Public Records



The Public has a right to:

1. Inspect such records promptly during regular office or business hours,
2. Copy such records,
3. Receive a copy of such records.

What is "prompt"?



- Without undue delay.
- Take into account the agency's workload.
- FOI requests are a part of the agency's duties and should be given no greater or lesser priority simply because it is an FOI request.
- Take into account the requester's time requirements.
- Take into account size and difficulty of the request.
- The "Four (4) Day Rule."

Public Records General Rules



- No duty to conduct research or to create records that do not already exist.
- Requests may be oral (you should send a confirming letter).
- No reference to FOIA required.

Public Records Cost of Copies



- Can charge no more than 0.50 cents per page.
- If transcription is necessary, the fee shall equal the cost to the agency.
- Prepayment may be required if cost exceeds Ten (\$10.00) Dollars.
- CAN charge for formatting and programming.
- CAN NOT charge for search and retrieval.

Public Records What can be protected?



Exceptions – Federal law and State Statute

Exemptions - CGS §1-210(b)

Exclusions – Contained in other sections of the FOIA. Example: Residential addresses of police.

Public Records Exemptions



CGS §1-210(b) provides twenty-seven separate possible exemptions.

All exemptions are detailed and specific.

Public Records Exemptions



Example: CGS §1-210(b)(1):

Nothing in the FOIA shall be construed to require disclosure of... [p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure."

Public Records Exemption - Examples



- Exemptions are based on content.
- "Draft" watermark is not enough.

In order to be exempt, it must be:

1. Preliminary – must be subject to revision
2. Draft or note
3. Agency must determine: The public interest in withholding the documents clearly outweighs the public interest in disclosure.

Public Records The E-Mail Issue



- E-Mails are subject to the FOI Act.
- If you use your private e-mail for City Business, you will be responsible to archive your e-mails and respond to FOIA requests for your e-mails.
- Document retention requirements.

Public Records Document Retention



- Governed by the Public Records Administrator for the State of Connecticut.
- Includes all records: paper documents, e-mail, etc.
- Not all retention periods are the same.
- Retention periods are governed by the content of the document, not the document type.
- Some documents must be retained indefinitely.



The FOI Commission



FOI Commission The Process

- Ombudsman Process.
- Hearings are in Hartford.
- Contested case hearings are 90 minutes. May be continued if necessary.
- Testimony, exhibits and arguments are presented.
- Recommendations, called hearing officer reports, submitted to all parties and the Commission.
- Commission makes final decision at a subsequent meeting.

The FOI Commission Powers



1. Order the disclosure of public records.
2. Declare null and void votes taken at meetings held in violation of the FOI Act.
3. Fine the responsible public officials for violation of the FOI Act without reasonable grounds.
4. Fine people who bring meritless FOI complaints frivolously, without reasonable grounds and solely for the purpose of harassment.



Thank you for attending!

Please call me anytime with questions.